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## STERILIZATION OF CRIMINALS.

It is not the right of the jury to attempt to administer justice as they may see and understand it. The jury must, however, aid in this object by considering attentively, fairly and intelligently *the evidence* and the *court's instructions*, basing their verdict on the same, and nothing else.

Any juror has a right at any time to ask any questions in relation to the case that he may deem important, but the court will pass upon the propriety of any such question and the answer thereto.

No juror shall, while a case is pending, in any way communicate with anyone in relation thereto, except in the jury room.

Discussions and arguments of counsel in relation to matters of law are not to be considered by the jury, neither are they to consider any evidence that may be improperly given and ordered stricken out.

Any knowledge or information that any juror may have in relation to anyone connected with the case must not be considered, unless same is made a matter of evidence and a part of the record. Excusing a juror from service by counsel is entirely proper and does not indicate any personal objection.

The jury may send to the judge for further instructions or directions or for papers or exhibits. Any explanation desired in relation to these instructions will be furnished by the trial justice, and any infraction thereof by any juror may result in his summary punishment.

Failure of any juror to act under the foregoing rules may defeat the object of the trial, and necessitate a retrial of the case.

### ADDITIONAL NOTICE TO FOREMEN OF JURIES.

Foremen of juries are required, in addition to the duties of regular jurors, to see that all proceedings of the jury are conducted in a proper and orderly manner, and must report to the trial justice any improper act or statement of any juror or any infraction of the foregoing instructions.

In all cases the foreman must report the verdict; and where sealed verdicts are ordered, he must see that the form of the report is properly made out.

J. W. G.

**What to Do With Criminals.**—The criminal problem of the state of New York, writes Dr. Walter N. Thayer, in the *Survey*, for July 9, has in the last few years assumed startling proportions. "Our three great prisons," he says, "are crowded as never before, and the number continues to grow out of all proportion to increase in population. The average population of the state prisons from 1889 to 1906, both inclusive, was 3,470 men. In 1907 it was only 3,456. In 1908 it had grown to 3,817, an increase of nearly 400. Last year, 1909, the average swelled to 4,420, an increase of 600 over 1908 and of nearly 1,000 over 1907; 1910 shows a still greater increase. A relatively large number of these men are serving a second or subsequent sentence."

"The latest specific for the cure of crime and the eradication of the criminal, namely, sterilization, rests," he declares, "on the assumption that heredity is the main factor in perpetuating criminals and that environment plays but little, if any, part. But an analysis of the reformatory methods in our prisons shows them to be an attempt on the part of the law to change the whole trend of the criminal's life by a temporary environment supplied by the state. If environment is not an important factor in the formation of the criminal, and if heredity is the

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major cause of his moral obliquity, surely prison or reformatory discipline for a certain definite period can do little to make him a better citizen.

"If we are to adopt, as the sterilization idea would seem to recommend, a short cut to the paths of virtue; and if, as Marro would have us believe, 41 per cent of our criminals are what they are because of drunkenness on the part of one or both parents, would it not be well to go one step farther and practice vasectomy on all drunkards?

"No one questions the inadvisability of permitting the insane to procreate, but who is to judge a man's fitness from this standpoint? The daily papers give us cases without number of individuals whom one group of alienists declare on their oath to be insane, and whom other alienists equally noted, equally proficient, swear to be not only sane but desirable citizens. Who then is to decide?

"What protection does the present generation expect to receive against crime committed by these sterilized criminals? The warmest advocates of the emasculation idea will not claim that the sterile man has any fewer tendencies toward the commission of crime than the potent one. According to Dr. Sharp of Indiana Reformatory, "sterilization does not even reduce nor in any way affect the sexual appetite." It merely prevents impregnation. Of what use then is it, even in the case of the rapist? The horror one feels at rape is due not to fear of impregnation but to the act itself.

"Granting that the first aim of criminal law is the protection of the public, and granting that sterilization does not prevent the individual operated upon from committing crime, what would the advocate of sterilization do with this individual? It comes right back to the starting point: you must imprison the criminal to protect the public, and as long as he is in prison he cannot procreate. But if you discharge him before he makes up his mind to be a law-abiding citizen, be he potent or impotent, he will return to crime and to prison, and the problem is still with us.

"It seems to me the only hope we have of a satisfactory solution of the criminal question must come from a readjustment of the laws for the punishment for crime. A weak point in the present method of law enforcement, or in the manner of handling the criminal, is the fact that almost without exception the "old timer" or habitual criminal receives a shorter sentence than the first offender. It is the usual thing to find that the first offenders receive sentences varying from half again to several times in duration that of the old offender. Now, if we concede that the average first offender gets no more than he deserves, it follows *per se* that the habitual criminal gets less than he deserves. There are two reasons for this: First, absence of identification of the individual as an old offender; second, his willingness to plead guilty to a minor degree of crime, thus saving labor and expense for the district attorney's office. In the first offender, however, prison inspires a feeling of terror; he fights his case and is unwilling to plead guilty to any degree of crime, hoping to the last to be acquitted. As a result he is prosecuted, causes trouble and expense, and if convicted receives a severe sentence.

"Our criminal law has not kept pace with our prison methods. No one can tell when such a man will be fit to mingle with society, and only long observation can even approximate the time. Even then many mistakes will be made and many individuals will return to a life of crime.

"The remedy for this condition, it would appear, lies first in endeavoring to

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change the early environment of the children most prone to develop into the adult criminal; in supervision and control of the homes of incarcerated criminals; and if necessary, the commission of their children to special institutions for moral education and to alleviate the distress occasioned by the incarceration of the father. Second, so to reconstruct our penal laws as to place them abreast of the latest development in penological thought." J. W. G.

**Why Juries Refuse to Convict.**—Judge McKenzie Cleland, of the Chicago Municipal Court, gives the following reasons why juries refuse to convict in criminal cases:

"We have too much crime in this country. The daily press contains much criminal news, although little is printed unless it is of a sensational nature. Most crimes are now so common as to be deemed unworthy of notice by the papers. Statistics show that crime is increasing much faster than our population, and this would indicate that there is something radically wrong with our method of treating the criminal. This is usually assumed to be in our failure to punish him speedily and severely. It is true that it is difficult nowadays to convict persons charged with crime. About three out of four persons held to the criminal court by the Municipal Court judges in Chicago are freed by the juries before which they are tried. It is apparent that the reason for this is the sympathy of jurors—not with crime, as is sometimes charged—but with men convicted of crime and with their families.

"The consequences of imprisonment are so disastrous that juries hesitate long before visiting them upon their fellowmen, and the more highly organized society becomes the more disastrous and far-reaching become the effects of a prison term. An ex-convict can no longer remove to another country or state and begin life over again. Modern inventions, like the railroad and the camera and the newspaper, have made this impossible, and as a result these men are forced into the ranks of the professional criminal, of whom it is estimated we have more than 100,000 in this country.

"There would seem to be something radically wrong with the system of government which compels a man to commit crime for a living or which permits such a thing as a professional criminal to be at liberty, and yet this is the undoubted result of our present system of punishing offenders. Even granting that men are reformed by punishment, which few believe, nevertheless what benefit is it to society if he is thereby made an outcast and compelled to again violate the law? It follows therefore that the prison should not be the first but the last resort in the treatment of the criminal, and the reason for an offender's imprisonment should be—not punishment, but protection to society from his acts. This would result not in shortening prison terms, but in lengthening them. We all know that most men who violate the law do so as a result of their environment and not from any desire to commit crime. In the great majority of such cases the wrongdoer can be reformed by removing the cause. I can conceive of no greater wrong to society than to imprison unfortunates just long enough to ruin them and then turn them out to commit crime. This process is now being applied to about five hundred thousand men every year in our country, and yet we wonder why crime is increasing!

"If the power and intelligence of the courts were applied to ascertain, in each individual case, the cause of the wrongdoer's act, and then remove such cause—which is entirely possible in a very large majority of the cases—these men could